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7 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
8 **AT YAKIMA**

9 ENRIQUE JEVONS, as managing
member of Jevons Properties LLC,
10 et al.,

11 Plaintiffs,

12 v.

13 JAY INSLEE, in his official
capacity of the Governor of the
State of Washington, et al.

14 Defendants.
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NO. 1:20-cv-03182-SAB

DEFENDANTS' REPLY
STATEMENT OF
MATERIAL FACTS NOT IN
DISPUTE

NOTED FOR: August 5, 2021
at 1:30 pm

With Oral Argument

Pursuant to Local Civil Rule 56(c)(1), Defendants submit this Reply Statement of Material Facts Not in Dispute in conjunction with their Reply Brief in Support of their Cross-Motion for Summary Judgment.

Defendants' Material Facts Not in Dispute¹	Evidentiary Basis Countering Plaintiffs' Objections
4. Because of the speed with which COVID-19 spreads in a community and the portion of COVID-19 patients who require hospitalization, intensive care, and mechanical ventilation, outbreaks threaten to overwhelm the healthcare system. ECF No. 34 at 7.	Plaintiffs object to this fact, as lacking foundation, under the mistaken impression that it refers to a present outbreak. <i>See</i> ECF No. 38 at 2. The Court should overrule this objection because this is a general statement that—without efforts to slow the transmission of COVID-19—COVID-19 outbreaks would overwhelm the capacity of the healthcare system as measured by the intensive care units and ventilators used by COVID-19 patients.
5. Without efforts to stop person-to-person transmission, studies have shown that unmitigated spread of COVID-19	To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an

¹ The paragraph numbers are based on the paragraph numbers used in Defendants' Statement of Material Facts Not in Dispute filed at ECF No. 31.

would lead to an explosion of cases, many more hospitalizations and fatalities, and an untenable burden on the healthcare system. ECF No. 34 at 10.

objection. *See* ECF No. 38 at 2. But if Plaintiffs object to this fact as lacking foundation, the Court should overrule it because the objection is made under the mistaken impression that it refers to a present outbreak. This is a general statement that—without efforts to slow the transmission of COVID-19—COVID-19 outbreaks would lead to increased cases and fatalities.

8. Without a vaccine or highly effective treatment for COVID-19, reducing person-to-person transmission through community mitigation measures is the most effective way of mitigating the outbreak and ensuring that the healthcare system is not overwhelmed. ECF No. 34 at 11–12.

Plaintiffs object to this fact under the mistaken impression that the State is asserting that no vaccine is presently available. *See* ECF No. 38 at 2. The Court should overrule this objection because this fact states that, in the absence of a vaccine or highly effective treatment, community mitigation measures are the most effective way to slow the transmission of COVID-19 and prevent an outbreak. When the State first

1		instituted mitigation measures, starting
2		in late February 2020, no vaccine was
3		available at that time. ECF No. 34 at 10–
4		11.
5	12. An analysis of Seattle unlawful	Plaintiffs object to this fact under
6	detainer cases showed that most	Fed. R. Evid 402, contending that
7	evictions result in homelessness, with	circumstances in Seattle are not relevant
8	only 12.5% of evictees finding another	to Plaintiffs’ properties in Yakima. <i>See</i>
9	home. ECF No. 36-1 at 8.	ECF No. 38 at 3. The Court should
10		overrule this objection because the
11		public health justifications for—and
12		state interests served by—the State
13		Moratorium are general and statewide.
14		This fact is relevant because it is of
15		consequence in determining the action.
16		<i>See</i> Fed. R. Evid. 401.
17	14. The Department of Health was	To the extent Plaintiffs object to this
18	concerned about outbreaks of COVID-	statement, the Court should overrule it
19	19 among persons experiencing housing	because they provide no basis for an
20	insecurity and homelessness because	objection. <i>See</i> ECF No. 38 at 3. But if
21	they are generally at increased risk of	Plaintiffs object to this fact as irrelevant
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1 acquiring COVID-19 due to crowded
2 living situations, among other reasons,
3 and are often at increased risk for severe
4 COVID-19 due to underlying medical
5 conditions and co-morbidities. ECF
6 No. 34 at 27.

under Fed. R. Evid. 402, the Court
should overrule this objection. The
public health justifications for—and
state interests served by—the State
Moratorium are general and statewide.
This fact is relevant because it is of
consequence in determining the action.
See Fed. R. Evid. 401.

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10 17. Evictions themselves force
11 families into transiency and crowded
12 residential environments that increase
13 new contact with others and make
14 compliance with pandemic health
15 guidelines difficult or impossible. ECF
16 No. 34 at 30. Housing insecure families
17 often “double-up”—moving in with
18 family members or friends—in the wake
19 of evictions. ECF No. 34 at 30; ECF
20 No. 34-1 at 94.

Plaintiffs object to this fact, stating that
the statement “evictions themselves
force families into . . .” is not true for
every eviction. ECF No. 38 at 4.
Defendants do not assert that
consequences, such as crowded living
environments that increase contact with
others and make adherence to public
health guidance difficult, occur in every
eviction. Many housing insecure
families, however, find themselves in
shared living conditions—which have
been found to increase contact with

1		more people and make compliance with
2		certain public health guidance difficult.
3	20. As of April 24, 2021, the	Plaintiffs object to this fact under Fed.
4	Department of Health (DOH) has	R. Evid. 402, contending that this data
5	identified 202 COVID-19 outbreaks in	does not show outbreaks in homeless
6	homeless services or shelters. ECF	services or shelters in Yakima. ECF
7	No. 34 at 33, ECF No. 34-1 at 198.	No. 38 at 4. The Court should overrule
8		this objection because the public health
9		justifications for—and state interests
10		served by—the State Moratorium are
11		general and statewide. This fact is
12		relevant because it is of consequence in
13		determining the action. <i>See</i> Fed. R.
14		Evid. 401.
15	22. A rise in evictions, and the lifting	Plaintiffs object to this fact, contending
16	of their moratoria, has been found to	that the statement misstates the evidence
17	lead to significant increases in COVID-	cited by Dr. Lindquist. ECF No. 38 at 4.
18	19 infections and deaths. ECF No. 32	The Court should overrule this objection
19	at 8; ECF No. 32-2 at 80; ECF No. 34	because one particular study discussed
20	at 33–35, ECF No. 34-1 at 204–224,	and cited by Dr. Lindquist looked at
21	263–276, 289–295.	varying expiration dates of state eviction
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	<p>moratoria to evaluate whether lifting the moratoria was associated with increased COVID-19 spread and mortality. After controlling for other public health measures and state characteristics, the study found that lifting moratoria was associated with higher COVID-19 mortality and higher incidence of COVID-19. <i>See</i> ECF No. 34 at 35–36; ECF No. 34-1 at 289–295. Other studies cited by Dr. Lindquist showed, through modeling, significant impacts of evictions moratoria on infections and/or deaths from COVID-19. <i>See, e.g.</i>, ECF No. 34-1 at 263–276.</p>
<p>23. Containment of COVID-19 is slower and less effective at reducing the size of the pandemic when evictions are allowed to continue, even under lockdown scenarios. ECF No. 34 at 33–34, ECF No. 34-1 at 204–224.</p>	<p>To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. ECF No. 38 at 5. Defendants clarify, however, that the study cited in support of this statement used an</p>

1		epidemiological model to quantify the
2		effects of evictions.
3	27. In amending the Moratorium, the	Plaintiffs object to this fact under Fed.
4	Governor's Office sought input from	R. Evid. 402. ECF No. 38 at 5. The
5	many stakeholders, including residential	Court should overrule this objection
6	property owners, managers, and	because they do not argue why this fact
7	landlords. ECF No. 33 at 12; ECF	is irrelevant but also because it is
8	No. 32 at 11–13. Based on their input,	relevant to the State's arguments about
9	the Governor added several exceptions	the reasonableness and aims of the
10	to protect property owners and induce	Moratorium. This fact is of consequence
11	tenants able to pay rent to do so. <i>Id.</i>	in determining the action. <i>See</i> Fed. R.
12		Evid. 401.
13	29. Following input from property	Plaintiffs object to this fact, arguing that
14	owners regarding the treatment of	it is a statement of law. ECF No. 38 at 5.
15	unpaid rent as an enforceable debt,	The Court should overrule this objection
16	starting with Proclamation 20-19.1, the	because the statement includes
17	Moratorium allows owners to treat	information on what lead to changes in
18	unpaid rent as an enforceable debt if the	the Moratorium and the intent for those
19	tenant was offered but refused a	changes.
20	reasonable repayment plan. ECF No. 32	
21	at 12–13. The provision was meant to	
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1 strike a balance between alleviating
2 stress on tenants and providing an
3 avenue for landlords to be made whole;
4 it reduces the risk of “soft evictions”
5 while encouraging landlords and tenants
6 to work together. *Id.*

7 30. The Governor’s Office opted to
8 not place the burden of proof on tenants
9 by instead imposing a moratorium on
10 evictions with certain exceptions. ECF
11 No. 32 at 13. This decision was made
12 because, in many cases, tenants in
13 genuine economic distress due to the
14 pandemic are unable to provide
15 adequate proof of their distress. *Id.*
16 Many tenants have informal
17 employment or non-traditional sources
18 of income. For these tenants, proving
19 distress may not be as simple as
20 submitting a copy of a termination letter
21 from an employer. *Id.* A tenant who does
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To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. *See* ECF No. 38 at 6.

1 not lose their job could be facing
2 pandemic-related economic distress
3 anyway, such as the burden of caring for
4 family members who lost their jobs or
5 are unable to provide for themselves. *Id.*
6 Not all tenants in need of protection are
7 able to submit a declaration of hardship.
8 *Id.*

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10 31. The Moratorium and the
11 Governor's public messaging has
12 expressly stated that tenants should pay
13 rent if able and should communicate
14 with their landlords. ECF No. 32 at 13.

Plaintiffs object, arguing that what is
stated in the Moratorium is a question of
law and that the Governor's public
messaging is irrelevant under Fed. R.
Evid. 402. *See* ECF No. 38 at 7. The
Court should overrule this objection, at
least as to the Governor's messaging,
because it refers to the Governor's
actions reflecting his understanding of
the Moratorium's features and
requirements. *See* Fed. R. Evid. 401.

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20 34. The Moratorium does not forgive
21 any debt of unpaid rent and stresses that
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Plaintiffs object, arguing that this is a
statement of law. *See* ECF No. 38 at 7.

1 2 3 4	tenants “who are not materially affected by COVID-19 should and must continue to pay rent.” ECF No. 33-1 at 39.	But neither party asks the Court to interpret this provision of the Moratorium.
5 6 7 8 9	35. During the pandemic, at least 18,000 more Washingtonians have had to rely on cash assistance and 160,000 more on food assistance. ECF 32-1 at 147–150.	To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. <i>See</i> ECF No. 38 at 7.
10 11 12 13 14 15 16 17 18 19 20 21 22	36. Over 1.6 million Washingtonians have filed unemployment claims, and the State’s unemployment rate has exceeded its Great Recession peak. ECF No. 32 at 4. Through the first four months of this year, over 265,000 new unemployment claims were filed, showing that the jobs crisis persists more than a year after COVID-19 cases first emerged here. ECF No. 32 at 4–5, ECF No. 32-1 at 147–150; ECF No. 36-1 at 140–48.	To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. <i>See</i> ECF No. 38 at 7–8.

<p>37. Recent Census survey data reported that 10.7% of renters in Washington (160,080 people) are behind on their rent. ECF No. 32-2 at 213. 17.8% of renters (265,342 people) reported having little or no confidence in their ability to make rent. <i>Id.</i> at 214.</p>	<p>To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. <i>See</i> ECF No. 38 at 8.</p>
<p>38. An analysis by the Aspen Institute found that 649,000 to 789,000 people in Washington (up to 10.3% of the population) would be at risk of eviction without the Moratorium. ECF No. 32-2 at 8.</p>	<p>To the extent Plaintiffs object to this statement, the Court should overrule it because they provide no basis for an objection. <i>See</i> ECF No. 38 at 8.</p>
<p>39. Projections performed by the University of Washington Institute for Health Metrics and Evaluation state that mass evictions would result in between 18,235 to 59,008 more eviction-attributable COVID-19 cases, 1,172 to 5,623 more hospitalizations, and 191</p>	<p>Plaintiffs object under Fed. R. Evid. 402, arguing that these projections “are not shown to apply in Plaintiffs’ tenants’ circumstances[.]” ECF No. 38 at 8. The Court should overrule this objection because the public health justifications for—and state interests served by—the</p>

1 2 3 4	to 621 more deaths in Washington State. ECF No. 35-1 at 64–65.	State Moratorium are general and statewide. This fact is relevant because it is of consequence in determining the action. <i>See</i> Fed. R. Evid. 401.
5 6 7 8 9 10 11 12 13 14 15 16	40. On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included \$150 billion in direct assistance for state, territorial, and tribal governments. Pub. L. No. 116–136, 134 Stat. 281 (2020). From this fund, in early August 2020, Washington allocated more than \$100 million in Eviction Rent Assistance Program (ERAP) grants. ECF No. 32 at 9–10.	Plaintiffs object this statement, arguing that it is a statement of law and also irrelevant. <i>See</i> ECF No. 38 at 9. The Court should overrule this objection because interpretations of these statutes are not at issue and because the relief provided to tenants and landlords offered through these measures is relevant to the Court’s evaluation of the Moratorium’s impact and burdens. It is of consequence in determining the action. <i>See</i> Fed. R. Evid. 401.
17 18 19 20 21 22	41. ERAP funds, administered by local community organizations, provide up to three months of rent assistance to property owners on an eligible tenant’s behalf. ECF No. 32 at 9–10. Cities and	Plaintiffs object to this statement as vague. <i>See</i> ECF No. 38 at 9. The Court should overrule this objection because it provides a general overview of the Eviction Rent Assistance Program.

1 local authorities may run their own
2 rental assistance programs, including as
3 encouraged through certain tax
4 programs under state law. *Id.*

5 47. In April 2021, the Washington
6 Legislature adopted—and the Governor
7 signed into law—a bill that provides
8 tenant protections during and after this
9 current public health emergency. Under
10 that bill, the eviction moratorium
11 instituted through Proclamation 20-19.6
12 ends on June 30, 2021. Engrossed
13 Second Substitute S.B. 5160, 67th Leg.,
14 Reg. Sess. (Wash. 2021), *enacted as*
15 2021 Wash. Sess. Laws, ch. 115.

To the extent Plaintiffs object to this
statement, the Court should overrule it
because they provide no basis for an
objection. *See* ECF No. 38 at 9–10.

16
17 DATED this 25th day of June, 2021.

18 ROBERT W. FERGUSON
19 Attorney General

20 /s/ Cristina Sepe

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DATED this 25th day of June, 2021, at Tacoma, Washington.

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